

Internal Revenue Service

Department of the Treasury

**District
Director**

Date: SEP 27 1993

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have completed our consideration of your application for exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

You were incorporated [REDACTED], as a nonprofit corporation under the laws of the State of [REDACTED]. No purpose was listed in your original Articles of Incorporation, but they were later amended to provide that you are organized exclusively for charitable purposes. You were formed by [REDACTED] and [REDACTED]. They are the only [REDACTED] members of your Board of Directors. Each of them contributed \$[REDACTED] to you in [REDACTED].

According to your application and additional information provided later, your only activity is the providing of nonmedical transportation services to the public. You do not provide medical attention or treatment or emergency ambulance transportation and services.

There are no particular age or disability requirements, but it appears that most of your services are provided for the elderly, the disabled and to children. You provide door to door transportation to medical appointments, to senior centers, to special schools, daycare, and for shopping. Your services appear to be available to all and, according to your flyer and recorded message you accept Medicaid or private payment. Your clients are not required to be of a certain age, disability, medical condition, or to establish that other suitable transportation is either not available or affordable.

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Almost all of the charges for the services you provide are covered under Medicaid through contracts you have with the social service departments of several counties. Your charges are \$██████ per one-way trip plus █████ cents per mile starting with the ninth mile. Those charges equal the Medicaid reimbursement rate. Presently, substantially all of your riders are covered under Medicaid.

You have no policy allowing for the transportation of persons who are unable to pay you charges, either directly or through Medicaid. You state that you provide services for a few people now regardless of whether they can pay. You hope to eventually donate █████ percent (████%) of your transportation services. Except for your treasurer, your activities are carried on by paid employees, including a director, an administrative assistant, and seven drivers. Services are available every day, sixteen hours per day.

Your receipts, except for the initial contributions from your founders, are from fees for services. Your expenses include van and equipment leases, insurance, rent, gas, and salaries.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations,*** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

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"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Revenue Ruling 77-246, 1977-2 C.B. 190, found that a non-profit organization that provides, upon request, low cost bus transportation to senior citizens and handicapped persons in a community where public transportation is unavailable or inadequate qualifies for exemption under section 501(c)(3) of the Code as operated exclusively for charitable purposes. The stated purpose of the organization was to provide low cost transportation services to senior citizens and handicapped persons of a particular community. The organization owned and operated a bus which made frequent daily trips to transport senior citizens and handicapped persons to downtown shopping areas and medical facilities. Most riders telephoned in requests for services. Public transportation was otherwise unavailable or inadequate for those members of the community. Riders had to be able to show proof of age or handicap. The organization was substantially staffed by volunteers who donated their services. Although the organization charged a fee for services, it was dependent upon contributions and federal and local governmental or institutional grants in order to meet operating expenses. The ruling stated that it is generally recognized that the elderly and the handicapped, because of advanced age or disability, encounter forms of distress aside from financial considerations. The ruling found that providing transportation services for the elderly and the handicapped in the manner described is providing relief to the distressed and is a charitable purpose. Thus, the organization was held to qualify for exemption under section 501(c)(3).

Revenue Ruling 76-244, 1976-1 C.B. 155, held that an organization that provides home delivery of meals to elderly and handicapped people by volunteers, for a fee insufficient to cover the cost of operations but approximating the cost of the meals provided, or for a reduced fee or no fee depending on the recipient's ability to pay, is operated for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code.

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Unlike the two organizations described above, your services are not necessarily limited to any particular charitable class, but are available to the general public in the same manner that a trade or business offers its services or products to everyone. Riders are not required to show proof of age, disability, or that transportation is not otherwise available or affordable to them. In addition, your fees cannot be characterized as low-cost like the organizations described in the rulings. You charge \$██████ (\$██████ each way) for a roundtrip of █████ or █████ miles, which is not considered to be a low-cost fee.

Further, you have no policy of providing services at reduced fees or no fee for those who may not have Medicaid or private funds sufficient to pay your charges. Finally, unlike the two charitable organizations described in the rulings above, you do not make extensive use of a volunteer staff and you are not supported by public donations.

Accordingly, we are unable to distinguish your method of operations from that of an ordinary trade or business. A trade or business will not be considered charitable only because the consumers of its services or products may be elderly or disabled. Significant charitable elements, as illustrated above, must be present. Those elements are not present in your operations.

Therefore, because we have determined that you are not operated exclusively for charitable purposes, but are operated in the nature of an ordinary trade or business, tax-exempt status under section 501(c)(3) is denied. You should file federal income tax returns.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any questions, you may contact the person whose name, telephone number, and address appears on the top of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:
Form 6018
Publication 892